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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of

Request of A.C. Nielsen)
Nielsen Company for)
Permissive Use of Line)
22 of the Active)
Portion of the Television)
Video Signal)

DA 89-1060

OFFICE

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To: The Commission

COMMENTS OF THE ARBITRON COMPANY

The Arbitron Company (Arbitron), by its attorneys and in response to the request for public comment released by the Commission on September 1, 1989 (DA 89-1060), submits these comments on the request by the A.C. Nielsen Company (Nielsen) for permissive authority for broadcast licensees to use line 22 of the "active portion" of the television video signal to transmit Nielsen's encoded program identification signals, and the opposing comments filed by Airtrax. Arbitron's comments do not address the dispute between Nielsen and Airtrax, but rather are directed to the public interest issues raised by that dispute. As a national provider of program rating data and other survey, statistical, and research information relied on by the television broadcast industry, Arbitron has a direct interest in these issues.

Information about and tracking of programs and commercials on television stations is important to television broadcast licensees. Such data are vital in providing advertisers with the

information they need to use the television medium. Our Nation's system of commercial-supported television cannot function in a free marketplace without reliable programming and commercial carriage data.

Both Nielsen and Airtrax say that their encoding systems provide such data. The difficulty, according to their filings, is that a grant of the Nielsen request will have a preclusive effect with respect to line 22, effectively reserving it in perpetuity to the exclusive use of Nielsen. The ultimate public interest issue presented, therefore, is not simply whether use of the line for Nielsen's system should be permitted, but rather whether the use of the line for all other purposes and by all other persons should be foreclosed.

The filings indicate that there may be problems with the use of vertical blanking interval line 20 for non-network programming and commercial encoding, problems that do not exist for line 22, but the filings do not make clear what is required to eliminate the claimed line 20 problems. The filings also do not make clear whether (1) it would be possible for Nielsen to use line 22 in such a way so as not to foreclose its use by others, and (2) whether there are other lines not presently authorized for use, for example, lines 23 and 524, which could equally effectively be used by Nielsen. There is at least some suggestion in the filings that a key motivating factor may be the private cost savings involved in continuing to use old technology, rather than actual technical constraints on the use of v.b.i. and active signal lines.

In connection with the apparent preclusive effect Nielsen's proposal would have, it appears that Nielsen's encoding procedure continuously occupies all 30 frames per second, whereas Airtrax's technology uses only 2 frames per second. It is not apparent why Nielsen could not use less than 30 frames, leaving room for other users. If it is possible to use encoding techniques requiring only two frames per second, it would appear that the line could be occupied by as many as 15 users. Nor is it apparent why use of line 22 must be continuous.

If use of line 22 is the only practicable way to secure needed programming and commercial data through acceptable encoding techniques, the decisional criteria specified in the Commission's Public Notice seem tangential, at best, to a rational public interest determination. The fact that Nielsen's AMOL system, Airtrax's commercial monitoring system, or any other system for that matter, is compatible with technical standards for television service and will not produce unacceptable picture degradation is not, with all respect, dispositive of the public interest course the Commission should follow. The fact that use of one system will enhance broadcast operation seems almost irrelevant to the public interest determination if other systems have the same enhancement effect and would be, as a practical matter, foreclosed by a grant of the former.

There doubtless are other potential users of line 22, Arbitron among them, who now provide, or may provide in the future, substantial and needed support services for television

licensees. If line 22 is a unique resource for broadcasters, Commission precedent strongly points towards requiring sharing, as the Commission has done, for example, in connection with unique transmitter antenna sites. When a unique resource cannot be shared, for example, a broadcast channel itself, the Commission painstakingly invites competing applications and comparatively considers them in making its ultimate allocation decision. It does not, willy nilly, grant any application which is otherwise acceptable, in perpetuity, and on a first-come, first-served basis. If the Commission intends to follow such an approach in the case of line 22, or any other lines, Arbitron asks that notice of that fact be given so that other parties may apply, which Arbitron will do.

An authorization for exclusive use of any portion of the active video signal should not, and as a matter of law probably cannot, be granted in perpetuity but rather should be limited to the license term; five years. While it is true that encoded signals are broadcast by stations, not by Nielsen or Airtrax, for potential new exclusive users to seek access to line 22 by challenging license renewal applications would exalt form over substance. Nielsen and Airtrax are, as a practical matter, the transmitters, and exclusive use by them should itself be subjected to an appropriate time limit.

If Nielsen's line 22 application were granted with the effect of precluding use for Airtrax signals, and then a subsequent application were filed which would have the effect of precluding use for Nielsen signals, would the Commission proceed to grant

that application solely on the basis that it met the three-part test outlined in the Commission's Notice? Surely it cannot be that the public interest is best served by the last granted application, no matter what it is.

The use made of the active video signal by Airtrax, and the use of it proposed to be made by Nielsen, are private carriage, not broadcast, uses. If a television licensee encoded its active video signal and used it solely for the purpose of making private transmissions to the home of its owner, or to a theater where it presented private shows, it would be an impermissible broadcast use. The same would appear to be true with respect to one line of that signal. Private and common carriage use of the vertical blanking interval lines are authorized by the Commission's rules, but they are not authorized for the active video signal lines. Particularly if lines usable for such signaling purposes are in fact extremely limited (as the dispute between Nielsen and Airtrax assumes), exclusive private use would be contrary to the public interest. Broadcasting would be enhanced by permitting all persons to use any signals transmitted, that is, to prohibit their being encoded in such a way as to restrict access to them.

Since the issue before the Commission is the preclusive and exclusive use, in perpetuity, of a portion of the broadcast spectrum which is important to the effective marketplace functioning of free commercial broadcasting, the Commission would obviously be

well advised to proceed with more complete knowledge of the relevant facts than has yet been provided to it. With all respect, therefore, Arbitron urges that, before it decides whether to grant Nielsen's application, the Commission needs to know:

(a) whether line 22 is the only line suitable for program and commercial encoding technology;

(b) whether, if it is, it can be shared by competing (or complementing) users;

(c) whether, if the answers to (a) and (b) are yes, there is any valid public interest reason why sharing should not be required; and

(d) how, if the available line capacity for encoding technology is limited and cannot be shared, that capacity can best be allocated among existing and future competing uses and users so as to enhance and foster the public interest in television broadcasting.

Further, it would appear appropriate for Nielsen and Airtrax to bear the burden of demonstrating why sharing of line 22 cannot be accomplished and, if it cannot, why some other technological approach cannot be used to accommodate not only both Nielsen and Airtrax, but also additional, future uses and users. Next, is it incumbent on the Commission to establish an appropriate term for any preclusive use of any portion of the video signal, and Nielsen and Airtrax should be required to address this issue if the uses they propose are preclusive. Finally, it is far from clear that the controlling public interest in broadcasting is well served by permitting the transmission of signals encoded in such a way that

they cannot be used by all who receive them, including the transmitting broadcast stations themselves. It would appear far more consistent with the public interest, and with the very concept of free television broadcasting, not to permit such private carriage use of the active video portion of a television broadcast signal. Arbitron believes therefore, that any encoded information transmitted in this way should be required to be made available for general use in support of television broadcasting.

Respectfully submitted,

THE ARBITRON COMPANY

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September 22, 1989

CERTIFICATE OF SERVICE

I hereby certify that, this 22nd day of September, 1989, I have served a copy of the foregoing Comments of The Arbitron Company by hand delivery or first class mail, postage prepaid, on the following:

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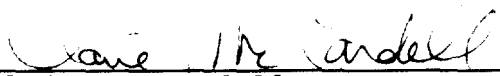
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